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OFFICE OF PETITIONS

In re Application of :
Gary E. LeGrow, et al :
Application No. 10/002,710 :
Filed: October 24, 2001 :
Attorney Docket No. 2001US405 :
ON PETITION

This is to notify petitioner that the petition under 37 CFR 1.313(c)(2), filed by facsimile transmission on April 11, 2007, to withdraw the above-identified application from issue after payment of the issue fee, was dismissed as moot as of June 26, 2007, the date upon which the above-identified application issued as U.S. Patent No. 7,235,230.¹

Any inconvenience caused petitioner is regretted; however, petitioner's attention is directed to 37 CFR 1.313(d) which states that "A petition under this section [37 CFR 1.313(c)] will not be effective to withdraw the application from issue **unless it is actually received and granted by the appropriate officials before the date of issue**" (emphasis in bold). In this instance, the April 11, 2007 petition was not received by the appropriate official until after the date of issuance of U.S. Patent No. 7,235,230 on June 26, 2007. See also MPEP 1308, which states, in pertinent part:

"The Office cannot ensure that any petition under 37 CFR 1.313(c) [filed after payment of the issue fee] will be acted upon prior to the date of patent grant. See *Filing of Continuing Applications, Amendments, or Petitions after Payment of Issue Fee*, Notice, 1221 Off. Gaz. Pat. Office 14 (April 6, 1999) . . . applicants are strongly cautioned to file any desired RCE prior to payment of issue fee. In addition, applicants considering filing a RCE after payment of the issue fee are strongly cautioned to call the Office of Petitions to determine whether sufficient time remains before the patent issue date to consider (and grant) a petition under 37 CFR 1.313(c) and what steps are needed to ensure that a grantable petition under 37 CFR 1.313(c) is before an appropriate official in the Office of Petitions in sufficient time to grant the petition before the patent is issued" (emphasis in bold).

¹ The jurisdiction of the Office over an application ends once the application issues as a patent.

While petitions to withdraw from issue after payment of the issue fee may be transmitted by facsimile to the Centralized Facsimile Number, as was done in this case, applicants were cautioned to hand carry or transmit by facsimile the petition to withdraw from issue directly to the Office of Petitions to allow sufficient time to process the petition. (See *Centralized Delivery and Facsimile Transmission Requirements for Patent Application Related Correspondence*, 1275 Off. Gaz. Pat. Office 200 (Oct. 28, 2003)).

Because the April 11, 2007 petition under 37 CFR 1.313(c) to withdraw from issue was not granted prior to issuance of the application into a patent, the Request for Continued Examination (RCE) filed on April 11, 2007, is considered an improper submission under 37 CFR 1.114. Accordingly, the RCE and accompanying Information Disclosure Statement (IDS) will remain in the file of the above-identified patent without further consideration.

Under the circumstances of this case, no fees in regard to papers filed on April 11, 2007, are necessary. Therefore counsel's deposit account will be credited the \$130 petition fee and the \$790 RCE filing fee paid on April 11, 2007.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions